

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TYLER SELL, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

ACER THERAPEUTICS INC., CHRIS SCHELLING,
and HARRY PALMIN,

Defendants.

CASE No.: 1:19-cv-06137-GHW

**STIPULATION AND ORDER
SETTING PLEADING AND
BRIEFING SCHEDULE**

CLASS ACTION

WHEREAS, on July 1, 2019, plaintiff Tyler Sell commenced the above-captioned action by filing his initial Class Action Complaint (“Initial Complaint”) (ECF No. 1) against defendants Acer Therapeutics Inc., Chris Schelling, and Harry Palmin (collectively, “Defendants”);

WHEREAS, the Initial Complaint asserts claims pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder on behalf of a putative class;

WHEREAS, the Initial Complaint is governed by the Private Securities Litigation Reform Act of 1995, including the provisions for the appointment of a lead plaintiff;

WHEREAS, the parties anticipate that the Court-appointed lead plaintiff will file an amended complaint against Defendants;

WHEREAS, on August 6, 2019, by so-ordering the Joint Stipulation Regarding Time to Answer or Otherwise Plead (ECF No. 8) (“August 6, 2019 Order”), this Court adjourned the deadline by which Defendants would be required to respond to the Initial Complaint because a response to the Initial Complaint may be rendered unnecessary by the filing of an amended complaint;

WHEREAS, in the August 6, 2019 Order, the Court instructed the parties to submit a proposed schedule for the filing of an amended complaint and the response thereto within 14 days following the order appointing Lead Plaintiff;

WHEREAS, on September 25, 2019, the Court appointed plaintiff Nicholas Skiadas to serve as Lead Plaintiff, and appointed The Rosen Law Firm, P.A. as Lead Counsel in this action (ECF No. 24); and

WHEREAS, Lead Plaintiff and Defendants have agreed, subject to the Court's approval, to a schedule governing the filing of (i) an amended complaint, (ii) Defendants' response to that amended complaint, and (iii) if Defendants' response is by motion, a briefing schedule for such motion practice,

NOW, THEREFORE, the undersigned parties, through their attorneys and subject to the Court's approval, stipulate and agree to the following:

1. Lead Plaintiff shall file his amended complaint on or before December 3, 2019;
2. Defendants shall move, answer, or otherwise respond to the amended complaint on or before February 7, 2020;
3. If Defendants file a motion to dismiss, Lead Plaintiff shall file his opposition to the motion on or before March 6, 2020, and Defendants shall file their reply in further support of any motion to dismiss the amended complaint on or before March 27, 2020.

IT IS SO STIPULATED AND AGREED TO THIS 8th day of October, 2019.

The Court reminds the parties that, pursuant to Rule 2.C of the Court's Individual Rules of Practice in Civil Cases, the parties must submit a joint letter and schedule a pre-motion conference before filing a motion to dismiss. Therefore, if Defendants intend to file a motion to dismiss, the parties should file a joint letter no later than January 10, 2019.

THE ROSEN LAW FIRM, P.A.

/s/ Keith Lorenze

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*Lead Counsel for Lead Plaintiff and
Putative Class*

In addition, the Court directs Defendant to submit a pre-motion conference letter with respect to any prospective motion to dismiss no later than January 15, 2020.

Dated October 9, 2019

IT IS SO ORDERED:


The Honorable Gregory H. Woods
United States District Judge